When fraud becomes an element of the situation, however, the ordinary rule, founded on equitable principles, permitting the defrauded party to trace and recover his property, must apply. 2 PARSONS, CONTRACTS, 9th ed., 949. Thus in the case of a certified check in the hands of a fraudulent payee, the maker has a right to recover it, and the payee holds it in constructive trust for him. See 19 HARV. L. REV. 55. If the bank has knowledge of the facts, it would seem proper not only that it should have the right not to honor the check, but that it should be liable to the maker, if it does honor it. That the payee has turned penitent when he asks the bank to pay the check, and is about to reimburse the maker, is highly improbable, and payment by the bank, with knowledge of these circumstances, is an equitable tort against the maker, an injury to his beneficial interest in the check, the *res*, such as to make the bank liable to him, as *cestui*, for its connivance at the breach of the constructive trust. Cf. 19 HARV. L. REV. 68. Where the payee has been guilty of theft, the same constructive trust relationship would arise; but it is difficult to find the basis on which the drawer could urge any equitable claim where he and the payee are confederates in illegality. In such a case the maker, since he is *in pari delicto* with the payee, is in no position to claim any equity in his own favor. See *McCord* v. *Bank*, 96 Cal. 197.

DEPENDENT SERVICES OF COMMON CARRIER. — In the general development of the law of public-service companies, certain phases of the subject have received inadequate treatment by courts and text-writers. One of these relates to the dependent services of common carriers. A recent article by Professor Wyman furnishes an admirable discussion of the question, not only collating the leading cases on the points involved, but working out a consistent theory by which to test the conflicting decisions. *The Public Duty of the Common Carrier in Relation to Dependent Services*, by Bruce Wyman, 17 Green Bag 570 (Oct., 1905). The subject involves the relations of railroads to express companies, palace and refrigerator car companies, hackmen at railway stations, transfer companies, etc. The authorities seem to be about equally divided, and as the question has been passed upon as yet in less than half of the States of the country, the subject is a fruitful one for discussion.

The case of the express companies may be taken as typical. Is the carrier bound to furnish express facilities to all express companies which apply, or may it make an exclusive agreement with one company for the carriage of all express matter over its line? The carrier's responsibility is founded on its public duty. It seems that it owes no direct duty to the express companies, for it might, *ultra vires* aside, carry on an express business itself and shut out all express companies from its line. Moreover, it has never held itself out as a carrier for all express companies. Historically the relation has always been based on contracts with individual companies. Its duty is to the shipping public to carry all express matter from one end of its rails to the other. If none of the law of public service applies between the carrier and the express company, however, it follows, argues Professor Wyman, that the latter may be charged extortionate prices by the carrier, which in turn will react upon the public. The express company is itself a common carrier, and therefore bound to carry at a reasonable rate; but this duty is relative, and if it must pay an increased price, it may charge it against the public as a necessary operating expense. To protect the public from such a result the author submits that we must apply the law of public service companies throughout. To insure the public the satisfactory service at a reasonable rate, to which it is undoubtedly entitled, we must hold that the carrier performs its whole duty only by serving all express companies with adequate facilities, without discrimination and for a fair compensation.

It may be argued, however, that since the railroads' only duty is to the public, so long as the public are served to their reasonable satisfaction, it is a

matter of no importance as to the particular agency through which this is accomplished. *Sargent* v. *Boston, etc., R. R.*, 115 Mass. 416. This doctrine has received the approval of the United States Supreme Court. *The Express Cases*, 117 U. S. 1. On strict legal theory it seems difficult to escape the result reached. Moreover, it does not seem that it allows the exploitation of the public. For if the railroad is under a duty to carry at a reasonable rate, it cannot escape this obligation by delegating the performance of it. Whether it chooses to act through one express company or several, the public may still enforce its right to a reasonable rate from the road. The case does not seem to present any insuperable practical difficulty, as the public may work out its rights as to the transportation of express matter along lines similar to those followed as to the carriage of freight. Professor Wyman's remedy is open to objection from a practical standpoint, in that it would tend to increase through the wastes of competition the reasonable rate which the public must pay.

ALIEN LABOR LEGISLATION AND THE COURTS. *Henry A. Prince.* 41 Can. L. J. 628.

CHRISTIAN SCIENTISTS AND THE LAW. *Walter Mills.* Demanding that they be treated as physicians in so far as to place them under the Medical Acts. 4 Can. L. Rev. 435.

COMPARATIVE STUDY OF THE CONSTITUTIONS OF THE UNITED STATES OF MEXICO AND THE UNITED STATES OF AMERICA, A. *William H. Burges.* Stating and contrasting seriatim the provisions of the Constitutions of the two countries. 39 Am. L. Rev. 711.

DISTINCTION BETWEEN REAL AND PERSONAL PROPERTY, THE. *T. M.* Advocating the abolition of the distinction between realty and personalty save in so far as inherent in the nature of things. 9 L. Notes (N. Y.) 125.

EXCLUSION AND DEPORTATION OF ALIENS. *Parliamentum.* Considering whether an act to return an alien "to the country whence he came" is extra-territorial in effect. 25 Can. L. T. 487.

EXCLUSIVENESS OF THE POWER OF CONGRESS OVER INTERSTATE AND FOREIGN COMMERCE. I, II. *James S. Rogers.* 53 Am. L. Reg. 529, 593.

EXIT OF THE DOCTRINE OF SITUS. *John R. Rood.* A favorable comment upon the recent decision of Harris *v.* Balk, 25 Sup. Ct. Rep. 625, holding that where a debtor is garnisheed while temporarily within a foreign state and compelled to pay the debt, such payment furnishes a defense to a subsequent action by his creditor in the state where the debt was created. 61 Cent. L. J. 265.

FEDERAL SUPERVISION OF INSURANCE. *Anon.* 9 L. Notes (N. Y.) 123.

JURISDICTION RATIONE ORIGINIS. *George Duncan.* Arguing that a Scottish domicile and personal citation will give jurisdiction against a defendant living outside of Scotland, in a petitory action. 17 Jurid. Rev. 254.

LEGITIMATE FUNCTIONS OF JUDGE-MADE LAW. *Hannis Taylor.* An historical sketch of the importance of case law in supplementing constitutions and codes and in adapting them to changed conditions of society. 17 Green Bag 557.

PROCESS TO STOP THE RUNNING OF THE STATUTE OF LIMITATIONS, OF. *Anon.* 49 Sol. J. 721, 733, 741, 748, 757.

PUBLIC DUTY OF THE COMMON CARRIER IN RELATION TO DEPENDENT SERVICES. *Bruce Wyman.* 17 Green Bag 570. See *supra.*

STOPPING PAYMENT OF A CERTIFIED CHECK. *Anon.* 22 Bank. L. J. 411. See *supra.*

TREATIES AND EXECUTIVE AGREEMENTS. *John Bassett Moore.* Pointing out distinctions to be observed when the question arises, whether ratification by the Senate is necessary. 20 Pol. Sci. Quar. 385.

WHERE THERE IS A BREACH OF CONTRACT WHICH MAY BE REGARDED AS TOTAL, IS THE INJURED PARTY PREVENTED FROM RECOVERING FUTURE DAMAGES, BY BRINGING AN ACTION ONLY FOR PAST DAMAGES, WHERE THE TIME FOR FULL PERFORMANCE HAS NOT ARRIVED? *Anon.* Criticising a New York case which held that injured party could not recover future damages. 61 Cent. L. J. 281.